

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Accusation)
Against:)**

DAVID KAZU FUKUDA M.D.)

File No. 800-2016-022190

**Physician's and Surgeon's)
Certificate No. G77453)**

**Respondent)
_____)**

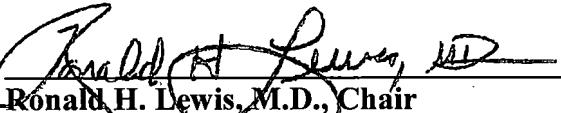
DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on March 22, 2019.

IT IS SO ORDERED February 22, 2019.

MEDICAL BOARD OF CALIFORNIA

By: 
Ronald H. Lewis, M.D., Chair
Panel A

1 XAVIER BECERRA
Attorney General of California
2 ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
3 ROSEMARY F. LUZON
Deputy Attorney General
4 State Bar No. 221544
600 West Broadway, Suite 1800
5 San Diego, CA 92101
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8 *Attorneys for Complainant*

9
10 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. 800-2016-022190

14 **DAVID KAZU FUKUDA, M.D.**
15 **P. O. Box 972**
Loma Linda, CA 92354-0972

OAH No. 2018100947

16 **Physician's and Surgeon's Certificate**
17 **No. G 77453,**

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

18 Respondent.

19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
23 of California (Board). She brought this action solely in her official capacity and is represented in
24 this matter by Xavier Becerra, Attorney General of the State of California, by Rosemary F.
25 Luzon, Deputy Attorney General.

26 2. Respondent David Kazu Fukuda, M.D. (Respondent) is represented in this proceeding
27 by attorney Gregory D. Werre, Esq., whose address is: Reback, McAndrews & Blessey, LLP,
28 1230 Rosecrans Avenue, Suite 450, Manhattan Beach, CA 90266.

1 3. On or about August 25, 1993, the Board issued Physician's and Surgeon's Certificate
2 No. G 77453 to Respondent. The Physician's and Surgeon's Certificate was in full force and
3 effect at all times relevant to the charges brought in Accusation No. 800-2016-022190, and will
4 expire on March 31, 2019, unless renewed.

5 **JURISDICTION**

6 4. On or about August 30, 2018, Accusation No. 800-2016-022190 was filed before the
7 Board, and is currently pending against Respondent. The Accusation and all other statutorily
8 required documents were properly served on Respondent on or about August 30, 2018, at his
9 address of record. Respondent timely filed his Notice of Defense contesting the Accusation. A
10 true and correct copy of Accusation No. 800-2016-022190 is attached as Exhibit A and
11 incorporated herein by reference as if fully set forth herein.

12 **ADVISEMENT AND WAIVERS**

13 5. Respondent has carefully read, fully discussed with counsel, and understands the
14 charges and allegations in Accusation No. 800-2016-022190. Respondent has also carefully read,
15 fully discussed with counsel, and understands the effects of this Stipulated Settlement and
16 Disciplinary Order.

17 6. Respondent is fully aware of his legal rights in this matter, including the right to a
18 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
19 the witnesses against him; the right to present evidence and to testify on his own behalf; the right
20 to the issuance of subpoenas to compel the attendance of witnesses and the production of
21 documents; the right to reconsideration and court review of an adverse decision; and all other
22 rights accorded by the California Administrative Procedure Act and other applicable laws,
23 having been fully advised of same by his attorney of record, Gregory D. Werre, Esq.

24 7. Having the benefit of counsel, Respondent voluntarily, knowingly, and intelligently
25 waives and gives up each and every right set forth above.

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1 discretion, approve and adopt this Stipulated Settlement and Disciplinary Order, with the
2 exception of this paragraph, it shall not become effective, shall be of no evidentiary value
3 whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party
4 hereto. Respondent further agrees that should this Stipulated Settlement and Disciplinary Order
5 be rejected for any reason by the Board, Respondent will assert no claim that the Board, or any
6 member thereof, was prejudiced by its/his/her review, discussion and/or consideration of this
7 Stipulated Settlement and Disciplinary Order or of any matter or matters related hereto.

8 **ADDITIONAL PROVISIONS**

9 13. This Stipulated Settlement and Disciplinary Order is intended by the parties herein
10 to be an integrated writing representing the complete, final and exclusive embodiment of the
11 agreements of the parties in the above-entitled matter.

12 14. The parties understand and agree that Portable Document Format (PDF) and facsimile
13 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile
14 signatures thereto, shall have the same force and effect as the originals.

15 15. In consideration of the foregoing admissions and stipulations, the parties agree that
16 the Board may, without further notice to or opportunity to be heard by Respondent, issue and
17 enter the following Disciplinary Order:

18 **DISCIPLINARY ORDER**

19 1. **PUBLIC REPRIMAND.**

20 IT IS HEREBY ORDERED that Respondent David Kazu Fukuda, M.D., Physician's and
21 Surgeon's Certificate No. G 77453, shall be and is hereby Publicly Reprimanded pursuant to
22 California Business and Professions Code section 2227, subdivision (a), subsection (4). This
23 Public Reprimand, which is issued in connection with Respondent's care and treatment of Patient
24 A, as set forth in Accusation No. 800-2016-022190, is as follows:

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1 Respondent did not adequately manage and document Patient A's pain medication
2 treatment, and Respondent improperly prescribed an extended release opioid to
3 Patient A on an as-needed (PRN) basis, as more fully described in Accusation No.
4 800-2016-022190, a true and correct copy of which is attached hereto as Exhibit A
5 and incorporated by reference as if fully set forth herein.

6 2. PREScribing PRACTICES COURSE.

7 Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a
8 course in prescribing practices approved in advance by the Board or its designee. Respondent
9 shall provide the approved course provider with any information and documents that the approved
10 course provider may deem pertinent. Respondent shall participate in and successfully complete
11 the classroom component of the course not later than six (6) months after Respondent's initial
12 enrollment. Respondent shall successfully complete any other component of the course within
13 one (1) year of enrollment. The prescribing practices course shall be at Respondent's expense
14 and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of
15 licensure.

16 A prescribing practices course taken after the acts that gave rise to the charges in the
17 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
18 or its designee, be accepted towards the fulfillment of this condition if the course would have
19 been approved by the Board or its designee had the course been taken after the effective date of
20 this Decision.

21 Respondent shall submit a certification of successful completion to the Board or its
22 designee not later than 15 calendar days after successfully completing the course, or not later than
23 15 calendar days after the effective date of the Decision, whichever is later.

24 3. MEDICAL RECORD KEEPING COURSE.

25 Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a
26 course in medical record keeping approved in advance by the Board or its designee. Respondent
27 shall provide the approved course provider with any information and documents that the approved
28 course provider may deem pertinent. Respondent shall participate in and successfully complete

1 the classroom component of the course not later than six (6) months after Respondent's initial
2 enrollment. Respondent shall successfully complete any other component of the course within
3 one (1) year of enrollment. The medical record keeping course shall be at Respondent's expense
4 and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of
5 licensure.

6 A medical record keeping course taken after the acts that gave rise to the charges in the
7 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
8 or its designee, be accepted towards the fulfillment of this condition if the course would have
9 been approved by the Board or its designee had the course been taken after the effective date of
10 this Decision.

11 Respondent shall submit a certification of successful completion to the Board or its
12 designee not later than 15 calendar days after successfully completing the course, or not later than
13 15 calendar days after the effective date of the Decision, whichever is later.

14 4. FAILURE TO COMPLY.

15 Any failure by Respondent to comply with the terms and conditions of the Disciplinary
16 Order set forth above shall constitute unprofessional conduct and grounds for further disciplinary
17 action.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Gregory D. Werre, Esq. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate No. G 77453. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED:

1-15-2019

David Kazu Fukuda, M.D.

DAVID KAZU FUKUDA, M.D.
Respondent

I have read and fully discussed with Respondent David Kazu Fukuda, M.D., the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED:

1/15/19

Gregory D. Werre

GREGORY D. WERRE, ESQ.
Attorney for Respondent

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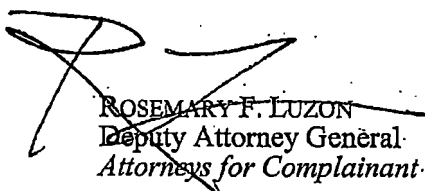
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California.

Dated: 1/15/2019

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General


ROSEMARY F. LUZON
Deputy Attorney General
Attorneys for Complainant

SD2018700853/71701714.docx

Exhibit A

Accusation No. 800-2016-022190

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO AUGUST 30 2018
BY: [Signature] ANALYST

XAVIER BECERRA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
ROSEMARY F. LUZON
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Attorneys for Complainant

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 800-2016-022190

David Kazu Fukuda, M.D.
P. O. Box 972
Loma Linda, CA 92354-0972

ACCUSATION

Physician's and Surgeon's Certificate
No. G 77453,

Respondent.

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about August 25, 1993, the Medical Board issued Physician's and Surgeon's Certificate No. G 77453 to David Kazu Fukuda, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2019, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2220 of the Code states:

"Except as otherwise provided by law, the board may take action against all persons guilty of violating this chapter. . ." [Chapter 5, the Medical Practice Act.]

5. Section 2227 of the Code states:

"(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

"(1) Have his or her license revoked upon order of the board.

"(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

"(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

"(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

"(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

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1 “(b) Any matter heard pursuant to subdivision (a), except for warning letters,
2 medical review or advisory conferences, professional competency examinations,
3 continuing education activities, and cost reimbursement associated therewith that are
4 agreed to with the board and successfully completed by the licensee, or other matters
5 made confidential or privileged by existing law, is deemed public, and shall be made
6 available to the public by the board pursuant to Section 803.1.”

7 6. Section 2234 of the Code states:

8 “The board shall take action against any licensee who is charged with
9 unprofessional conduct. In addition to other provisions of this article, unprofessional
10 conduct includes, but is not limited to, the following:

11 “(a) Violating or attempting to violate, directly or indirectly, assisting in or
12 abetting the violation of, or conspiring to violate any provision of this chapter.

13 “(b) . . .

14 “(c) Repeated negligent acts. To be repeated, there must be two or more
15 negligent acts or omissions. An initial negligent act or omission followed by a
16 separate and distinct departure from the applicable standard of care shall constitute
17 repeated negligent acts.

18 “(1) An initial negligent diagnosis followed by an act or omission medically
19 appropriate for that negligent diagnosis of the patient shall constitute a single
20 negligent act.

21 “(2) When the standard of care requires a change in the diagnosis, act, or
22 omission that constitutes the negligent act described in paragraph (1), including, but
23 not limited to, a reevaluation of the diagnosis or a change in treatment, and the
24 licensee’s conduct departs from the applicable standard of care, each departure
25 constitutes a separate and distinct breach of the standard of care.

26 “. . .”

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1 7. Section 2266 of the Code states:

2 "The failure of a physician and surgeon to maintain adequate and accurate
3 records relating to the provision of services to their patients constitutes unprofessional
4 conduct."

5 **FIRST CAUSE FOR DISCIPLINE**

6 **(Repeated Negligent Acts)**

7 8. Respondent has subjected his Physician's and Surgeon's Certificate No. G 77453 to
8 disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (c), of
9 the Code, in that he committed repeated negligent acts in his care and treatment of Patient A, as
10 more particularly alleged hereinafter:¹

11 9. On or about April 23, 2010, Respondent, a family practitioner, commenced his care
12 and treatment of Patient A, who was a homebound patient. Patient A suffered from multiple
13 medical issues, including chronic pain of the major joints, neck, and back, neuropathy, as well as
14 a history of prescription substance abuse, among other issues.

15 10. Between on or about April 23, 2010 and December 14, 2010, Patient A was seen by
16 Respondent on a near-monthly basis. During this timeframe, Respondent prescribed pain
17 medications to Patient A, including extended release morphine sulfate² and hydrocodone
18 acetaminophen.³ Respondent prescribed extended release morphine sulfate to Patient A on an as-
19 needed (PRN) basis.

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24 ¹ References to "Patient A" herein are used to protect patient privacy.

25 ² Morphine sulfate is a Schedule II controlled substance pursuant to Health and Safety
26 Code section 11055, subdivision (b), and a dangerous drug pursuant to Business and Professions
Code section 4022.

27 ³ Hydrocodone is a Schedule II controlled substance pursuant to Health and Safety Code
28 section 11055, subdivision (b), and a dangerous drug pursuant to Business and Professions Code
section 4022.

1 11. Between on or about January 18, 2011 and December 29, 2011, Patient A was seen by
2 Respondent on a near-monthly basis. During this timeframe, Respondent prescribed pain
3 medications to Patient A, including extended release morphine sulfate, hydrocodone
4 acetaminophen, and fentanyl patches. Respondent prescribed extended release morphine sulfate
5 to Patient A on an as-needed (PRN) basis.

6 12. Between on or about February 9, 2012 and December 13, 2012, Patient A was seen by
7 Respondent on a near-monthly basis. During this timeframe, Respondent prescribed pain
8 medications to Patient A, including extended release morphine sulfate and hydrocodone
9 acetaminophen. Respondent prescribed extended release morphine sulfate to Patient A on an as-
10 needed (PRN) basis.

11 13. Between on or about January 23, 2013 and December 26, 2013, Patient A was seen by
12 Respondent on a near-monthly basis. During this timeframe, Respondent prescribed pain
13 medications to Patient A, including extended release morphine sulfate and hydrocodone
14 acetaminophen. Respondent prescribed extended release morphine sulfate to Patient A on an as-
15 needed (PRN) basis.

16 14. Between on or about February 7, 2014 and June 18, 2014, Patient A was seen by
17 Respondent on approximately three occasions. During this timeframe, Respondent prescribed
18 pain medications to Patient A, including extended release morphine sulfate and hydrocodone
19 acetaminophen. Respondent prescribed extended release morphine sulfate to Patient A on an
20 as-needed (PRN) basis.

21 15. Between on or about January 20, 2015 and December 22, 2015, Patient A was seen by
22 Respondent on a near-monthly basis. During this timeframe, Respondent prescribed pain
23 medications to Patient A, including extended release morphine sulfate and hydrocodone
24 acetaminophen. Respondent prescribed extended release morphine sulfate to Patient A on an as-
25 needed (PRN) basis.

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1 16. In 2016, Patient A was seen by Respondent on or about February 10, 2016 and March
2 17, 2016. During this timeframe, Respondent prescribed pain medications to Patient A, including
3 extended release morphine sulfate and hydrocodone acetaminophen. Respondent prescribed
4 extended release morphine sulfate to Patient A on an as-needed (PRN) basis.

5 17. Throughout the entire period of Respondent's care and treatment of Patient A (*i.e.*,
6 between on or about April 23, 2010 and March 17, 2016), Respondent continuously prescribed
7 pain medications to Patient A, however, he did not document a pain treatment plan for Patient A
8 or review the existing pain regimen for Patient A on a periodic basis. He also did not obtain
9 Patient A's informed consent to prescribe opioids, nor did he prescribe naloxone to Patient A in
10 case of accidental overdose. He did not refer Patient A to a pain specialist and, upon being
11 apprised of Patient A's history of prescription substance abuse, Respondent did not refer Patient
12 A to an addiction specialist.

13 18. Respondent committed repeated negligent acts in his care and treatment of Patient A,
14 which included, but were not limited to the following:

15 A. Respondent failed to document a pain treatment plan for Patient A; he
16 failed to review the existing pain regimen for Patient A on a periodic basis; he failed
17 to obtain Patient A's informed consent to prescribe opioids; he failed to provide
18 naloxone to Patient A; he failed to refer Patient A to a pain specialist; and he failed to
19 refer Patient A to an addiction specialist upon being apprised of Patient A's history of
20 prescription substance abuse.

21 B. Respondent prescribed an extended release opioid (*i.e.*, extended release
22 morphine sulfate) to Patient A on an as-needed (PRN) basis.

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